

From: Ricker, Monique T. EOP/USTR Monique_T_Ricker@ustr.eop.gov 
Subject: CORRECTION: FOIA Request (MULTI-18-0869-0889)
Date: December 18, 2018 at 4:04 PM
To: American Oversight FOIA foia@americanoversight.org
Cc: FN-USTR-FOIA FN-USTR-FOIA@ustr.eop.gov



Katie,

Thank you for bringing to my attention the incorrect date. I confirmed with our eDiscovery team that the search was conducted from January 20, 2017.

I apologize for the confusion. I corrected the date in our final response **below**.

Thank you,
Monique

Monique T. Ricker
FOIA Program Manager/Attorney

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON DC 20508

From: Ricker, Monique T. EOP/USTR
Sent: Monday, December 17, 2018 1:31 PM
To: 'American Oversight FOIA' <foia@americanoversight.org>
Cc: 'FOIA@ustr.eop.gov' <FOIA@ustr.eop.gov>
Subject: RE: FOIA Request (MULTI-18-0869-0889)

Ms. Cafasso,

This email is the final response of the Office of the United States Trade Representative (USTR) to Freedom of Information Act (FOIA) No. FY19-25 submitted on November 19, 2018 requesting all records reflecting communications related to Ivanka Trump Kushner's use of personal email exchanged between USTR political appointees in the Offices of the US Trade Representative, Deputy US Trade Representatives (DUSTR), and General Counsel and individuals with email domains ending in @who.eop.gov, @ijkfamily.org, @wilmerhale.com, @nortonrosefulbright.com, or @winston.com. The timeframe for the search was between January 20, **2017** and November 21, 2018, the date the search was conducted.

Please note, the USTR does not utilize text messaging or messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages) nor does USTR create nor maintain voicemail transcripts or telephone call logs.

After a search of our files utilizing eDiscovery software, we did not locate records responsive to your request.

This constitutes a complete response to your request. You may contact me or my colleague Melissa Keppel at FOIA@ustr.eop.gov or 202-395-3419 for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may also administratively appeal by writing to: FOIA Office, ATTN: Janice Kaye, Office of the US Trade Representative, Anacostia Naval Annex, Bldg. 410/Door 123, 250 Murray Lane, S.W., Washington, D.C. 20509.

Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal" and should include a reference to the FOIA Case File number listed above. Heightened security in force may delay mail delivery; therefore we suggest that you also email any such appeal to foia@ustr.eop.gov.

In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you requested.

Thank you,
Monique

Monique T. Ricker
FOIA Program Manager/Attorney

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON DC 20508

From: American Oversight FOIA <foia@americanoversight.org>
Sent: Tuesday, November 20, 2018 2:42 PM
To: FN-CEQ-efoia <efoia@ceq.eop.gov>; FN-OSTP-OSTPFOIA <OSTPFOIA@ostp.eop.gov>; FN-USTR-FOIA <FN-USTR-FOIA@ustr.eop.gov>
Subject: [EXTERNAL] FOIA Request (MULTI-18-0869-0889)

Dear FOIA Officers:

Please find attached, and pasted below, a request for records under the Freedom of Information Act.

Sincerely

Sincerely,

Clay M. Goode
Paralegal
American Oversight
foia@americanoversight.org
>www.americanoversight.org< | @weareoversight

FOIA: MULTI-18-0869-0889

November 20, 2018

VIA ONLINE PORTAL OR ELECTRONIC MAIL

Council on Environmental Quality

Freedom of Information Officer

722 Jackson Place NW

Washington, DC 20503

efoia@ceq.eop.gov

Alexis Graves

U.S. Department of Agriculture

1400 Independence Avenue SW

Room 428-W, Whitten Building

Washington, DC 20250-0706

USDAFOIA@ocio.usda.gov

Michael Toland, Ph.D.

Departmental FOIA Officer

Office of Privacy and Open Government

U.S. Department of Commerce

14th and Constitution Avenue NW

Mail Stop 52010FB

Washington, DC 20230

Via FOIAOnline

OSD/JS FOIA Requester Service Center

Chief, Ms. Stephanie Carr

Office of Freedom of Information

U.S. Department of Defense

1155 Defense Pentagon

Washington, DC 20301-1155

whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

U.S. Department of Education

ATTN: FOIA Public Liaison

Office of Management

Office of the Chief Privacy Officer

400 Maryland Avenue SW, LBJ 2E320

Washington, DC 20202-4536

EDFOIAManager@ed.gov

FOIA Requester Service Center

U.S. Department of Energy

1000 Independence Avenue SW

Mail Stop MA-46

Washington, DC 20585

Washington, DC 20585

foia-central@hq.doe.gov

Records, FOIA, and Privacy Branch

Office of Environmental Information

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue NW (2822T)

Washington, DC 20460

Via FOIAOnline

U.S. General Services Administration

FOIA Requester Service Center (H1F)

1800 F Street NW, Room 7308

Washington, DC 20405-0001

Via FOIAOnline

Michael Marquis

Freedom of Information Officer

U.S. Department of Health and Human Services

Hubert H. Humphrey Building, Room 729H

200 Independence Avenue SW

Washington, DC 20201

FOIARequest@hhs.gov

The Privacy Office

U.S. Department of Homeland Security

U.S. Department of Homeland Security

245 Murray Lane SW

STOP-0655

Washington, DC 20528-0655

foia@hq.dhs.gov

Freedom of Information Act Office

U.S. Department of Housing and Urban Development

451 7th Street SW, Room 10139

Washington, DC 20410-3000

Via Online Portal

Clarice Julka

Office of the Secretary

U.S. Department of the Interior

MS-7328, MIB

1849 C Street, NW

Washington, DC 20240

os_foia@ios.doi.gov

Office of the Solicitor

U.S. Department of Labor

200 Constitution Avenue NW

Room N-2420

Washington, DC 20210

foiarequests@dol.gov

Kathy Ray

U.S. Department of Transportation

1200 New Jersey Avenue SE

W94-122

Washington, DC 20590

ost.foia@dot.gov

FOIA Request

U.S. Department of the Treasury

Washington, DC 20220

treasfoia@treasury.gov

U.S. Department of Veterans Affairs

810 Vermont Avenue NW

(005R1C) VACO

Washington, DC 20420

vacofoiaservice@va.gov

OSVAFOIA@va.gov

ogcfoiarequests@va.gov

FOIA Officer

Office of Management and Budget

1800 G Street NW

Washington, DC 20503

OMBFOIA@omb.eop.gov

FOIA Officer

Office of Science and Technology Policy

1650 Pennsylvania Avenue NW

Washington, DC 20504

ostpfoia@ostp.eop.gov

USTR FOIA Office, GSD/RDF

Attn: Chief FOIA Officer, Janice Kaye

Office of the U.S. Trade Representative

Anacostia Naval Annex, Bldg. 410/Door 123

250 Murray Lane SW

Washington, DC 20509

FOIA@ustr.eop.gov

Chief, FOIA/Privacy Act Office

U.S. Small Business Administration

409 3rd Street SW, 8th Floor

Washington, DC 20416

Via FOIAOnline

U.S. Department of State

Office of Information Programs and Services

A/GIS/IPS/RL

2025-01-01 01:00

SA-2, Suite 8100

Washington, DC 20522-0208

FOIArequest@state.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight makes the following request for records.

On November 19, 2018, the *Washington Post* reported that Ivanka Trump, Advisor to the President, made extensive and continuous use of a personal email account for official business during 2017.^[1] According to the report, the only reason Ms. Trump's personal email use came to the attention of White House officials was that American Oversight submitted FOIA requests for her communications. American Oversight submits this request for records that will inform the public of the nature of Ms. Trump's personal email use for official government business and what steps the administration has taken to ensure compliance with the Presidential Records Act.

Requested Records

American Oversight requests that your agency produce the following within twenty business days:

1. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any person in the Office of the White House, including any person whose email address ends in @who.eop.gov, discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner") and her use of non-governmental email, including any email address ending in @ivkafamily.org

ending in @ijkfamily.org.

2. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any person in the Office of the White House, including any person whose email address ends in @who.eop.gov, discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner") and FOIA.
3. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any non-governmental email address attributed to Ivanka Trump (or alternatively styled "Ivanka Kushner"), including but not limited to any email address ending in @ijkfamily.org.
4. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner"), FOIA, and the law firm WilmerHale. This request includes communications directly with the law firm WilmerHale.
5. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner"). FOIA, and the law firm Norton

Rose Fulbright. This request includes communications directly with the law firm Norton Rose Fulbright.

6. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled “Ivanka Kushner”), FOIA, and the law firm Winston & Strawn. This request includes communications directly with the law firm Winston & Strawn.

*“Political appointee” should be understood as any person who is a Presidential Appointee

with Senate Confirmation (PAS), a Presidential Appointee (PA), a Non-career SES, any

Schedule C employees, or any persons hired under Temporary Non-career SES

Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C

Appointments.

Please provide all responsive records from the immediate Office of the Secretary, the Office of the Deputy Secretary, and the Office of the General Counsel (or your agency’s equivalent of each) from January 20, 2017, to the date the search is conducted.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production**

collection, and production.

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.^[2] **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**^[3]

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**^[4] Furthermore, **agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files.** For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”^[5] If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”^[6] Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”^[7] Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”^[8]

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.^[9] Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight hopes to decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's implementing regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of activities of the government. The disclosure of the information sought under this request will document and reveal the operations of the federal government, including the email practices of a senior administration official and the steps taken to ensure compliance with federal records retention law—a matter that President Trump has suggested is sanctionable with imprisonment. There is profound interest in knowing the steps that the

government took to ensure compliance with the Presidential Records Act, and the records responsive to this request will contribute significantly to the public's understanding of the government's activities.

This request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.^[10] American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,^[11] American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.^[12] As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.^[13]

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at foia@americanoversight.org or (202) 869-5244. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink that reads "Cerissa Cafasso". The signature is fluid and cursive, with the first name "Cerissa" and last name "Cafasso" clearly distinguishable.

Cerissa Cafasso

Counsel

American Oversight

[1] Carol D. Leonnig & Josh Dawsey, *Ivanka Trump Used a Personal Email Account to Send Hundreds of Emails About Government Business Last Year*, WASH. POST, Nov. 19, 2018, >https://www.washingtonpost.com/politics/ivanka-trump-used-a-personal-email-account-to-send-hundreds-of-emails-about-government-business-last-year/2018/11/19/6515d1e0-e7a1-11e8-a939-9469f1166f9d_story.html?utm_term=.8afa86a8271c<.

[2] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); *cf. Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

[3] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

[4] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), ><https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records><; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), ><https://www.archives.gov/files/records-mgmt/m-12-18.pdf><.

[5] FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

[6] *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

[7] *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

[8] *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

[9] *Mead Data Central*, 566 F.2d at 261.

[10] American Oversight currently has approximately 12,000 page likes on Facebook and 48,000 followers on Twitter. American Oversight, FACEBOOK,

><https://www.facebook.com/weareoversight/>< (last visited Nov. 20, 2018); American Oversight (@weareoversight), TWITTER, ><https://twitter.com/weareoversight>< (last visited Nov. 20, 2018).

[11] *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance><.

[12] *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents><.

[13] *Audit the Wall*, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/investigation/audit-the-wall><.

From: Ricker, Monique T. EOP/USTR Monique_T_Ricker@ustr.eop.gov 
Subject: RE: FOIA Request (MULTI-18-0869-0889)
Date: December 17, 2018 at 1:31 PM
To: American Oversight FOIA foia@americanoversight.org
Cc: FN-USTR-FOIA FN-USTR-FOIA@ustr.eop.gov



Ms. Cafasso,

This email is the final response of the Office of the United States Trade Representative (USTR) to Freedom of Information Act (FOIA) No. FY19-25 submitted on November 19, 2018 requesting all records reflecting communications related to Ivanka Trump Kushner's use of personal email exchanged between USTR political appointees in the Offices of the US Trade Representative, Deputy US Trade Representatives (DUSTR), and General Counsel and individuals with email domains ending in @who.eop.gov, @ijkfamily.org, @wilmerhale.com, @nortonrosefulbright.com, or @winston.com. The timeframe for the search was between January 20, 2018 and November 21, 2018, the date the search was conducted.

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After a search of our files utilizing eDiscovery software, we did not locate records responsive to your request.

This constitutes a complete response to your request. You may contact me or my colleague Melissa Keppel at FOIA@ustr.eop.gov or 202-395-3419 for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may also administratively appeal by writing to: FOIA Office, ATTN: Janice Kaye, Office of the US Trade Representative, Anacostia Naval Annex, Bldg. 410/Door 123, 250 Murray Lane, S.W., Washington, D.C. 20509.

Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal" and should include a reference to the FOIA Case File number listed above. Heightened security in force may delay mail delivery; therefore we suggest that you also email any such appeal to foia@ustr.eop.gov.

In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you requested.

Thank you,
Monique

Monique T. Ricker
FOIA Program Manager/Attorney

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON DC 20508

From: American Oversight FOIA <foia@americanoversight.org>
Sent: Tuesday, November 20, 2018 2:42 PM
To: FN-CEQ-efoia <efoia@ceq.eop.gov>; FN-OSTP-OSTPFOIA <OSTPFOIA@ostp.eop.gov>; FN-USTR-FOIA <FN-USTR-FOIA@ustr.eop.gov>
Subject: [EXTERNAL] FOIA Request (MULTI-18-0869-0889)

Dear FOIA Officers:

Please find attached, and pasted below, a request for records under the Freedom of Information Act.

Sincerely,

Clay M. Goode
Paralegal
American Oversight
foia@americanoversight.org
>www.americanoversight.org< | @weareoversight

FOIA: MULTI-18-0869-0889

November 20, 2018

VIA ONLINE PORTAL OR ELECTRONIC MAIL

Council on Environmental Quality

Freedom of Information Officer

722 Jackson Place NW

Washington, DC 20503

efoia@ceq.eop.gov

Alexis Graves

U.S. Department of Agriculture

1400 Independence Avenue SW

Room 428-W, Whitten Building

Washington, DC 20250-0706

USDAFOIA@ocio.usda.gov

Michael Toland, Ph.D.

Departmental FOIA Officer

Office of Privacy and Open Government

U.S. Department of Commerce

14th and Constitution Avenue NW

Mail Stop 52010FB

Washington, DC 20230

Via FOIAOnline

OSD/JS FOIA Requester Service Center

Chief, Ms. Stephanie Carr

Office of Freedom of Information

U.S. Department of Defense

1155 Defense Pentagon

Washington, DC 20301-1155

whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

U.S. Department of Education

ATTN: FOIA Public Liaison

Office of Management

Office of the Chief Privacy Officer

400 Maryland Avenue SW, LBJ 2E320

Washington, DC 20202-4536

EDFOIAManager@ed.gov

FOIA Requester Service Center

U.S. Department of Energy

1000 Independence Avenue SW

Mail Stop MA-46

Washington, DC 20585

foia-central@hq.doe.gov

Records, FOIA, and Privacy Branch

Office of Environmental Information

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue NW (2822T)

Washington, DC 20460

Via FOIAOnline

U.S. General Services Administration

FOIA Requester Service Center (H1F)

1800 F Street NW, Room 7308

Washington, DC 20405-0001

Via FOIAOnline

Michael Marquis

Freedom of Information Officer

U.S. Department of Health and Human Services

Hubert H. Humphrey Building, Room 729H

200 Independence Avenue SW

Washington, DC 20201

FOIARequest@hhs.gov

The Privacy Office

U.S. Department of Homeland Security

245 Murray Lane SW

STOP-0655

Washington, DC 20528-0655

foia@hq.dhs.gov

Freedom of Information Act Office

U.S. Department of Housing and Urban Development

451 7th Street SW, Room 10139

Washington, DC 20410-3000

Via Online Portal

Clarice Julka

Office of the Secretary

U.S. Department of the Interior

MS-7328, MIB

1849 C Street, NW

Washington, DC 20240

os_foia@ios.doi.gov

Office of the Solicitor

U.S. Department of Labor

200 Constitution Avenue NW

Room N-2420

Washington, DC 20210

foiarequests@dol.gov

Kathy Ray

U.S. Department of Transportation

1200 New Jersey Avenue SE

W94-122

Washington, DC 20590

ost.foia@dot.gov

FOIA Request

U.S. Department of the Treasury

Washington, DC 20220

treasfoia@treasury.gov

U.S. Department of Veterans Affairs

810 Vermont Avenue NW

(005R1C) VACO

Washington, DC 20420

vacofoiaservice@va.gov

OSVAFOIA@va.gov

ogcfoiarequests@va.gov

FOIA Officer

Office of Management and Budget

1800 G Street NW

Washington, DC 20503

OMBFOIA@omb.eop.gov

FOIA Officer

Office of Science and Technology Policy

1650 Pennsylvania Avenue NW

Washington, DC 20504

ostpfoia@ostp.eop.gov

USTR FOIA Office, GSD/RDF

Attn: Chief FOIA Officer, Janice Kaye

Office of the U.S. Trade Representative

Anacostia Naval Annex, Bldg. 410/Door 123

250 Murray Lane SW

Washington, DC 20509

FOIA@ustr.eop.gov

Chief, FOIA/Privacy Act Office

U.S. Small Business Administration

409 3rd Street SW, 8th Floor

Washington, DC 20416

Via FOIAOnline

U.S. Department of State

Office of Information Programs and Services

A/GIS/IPS/RL

SA-2, Suite 8100

Washington, DC 20522-0208

FOIArequest@state.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight makes the following request for records.

On November 19, 2018, the *Washington Post* reported that Ivanka Trump, Advisor to the President, made extensive and continuous use of a personal email account for official business during 2017.^[1] According to the report, the only reason Ms. Trump's personal email use came to the attention of White House officials was that American Oversight submitted FOIA requests for her communications. American Oversight submits this request

submitted FOIA requests for her communications. American Oversight submits this request for records that will inform the public of the nature of Ms. Trump's personal email use for official government business and what steps the administration has taken to ensure compliance with the Presidential Records Act.

Requested Records

American Oversight requests that your agency produce the following within twenty business days:

1. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any person in the Office of the White House, including any person whose email address ends in @who.eop.gov, discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner") and her use of non-governmental email, including any email address ending in @ijkfamily.org.
2. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any person in the Office of the White House, including any person whose email address ends in @who.eop.gov, discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner") and FOIA.
3. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any non-governmental email address attributed to Ivanka Trump (or alternatively styled "Ivanka

Kushner”), including but not limited to any email address ending in @ijkfamily.org.

4. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled “Ivanka Kushner”), FOIA, and the law firm WilmerHale. This request includes communications directly with the law firm WilmerHale.
5. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled “Ivanka Kushner”), FOIA, and the law firm Norton Rose Fulbright. This request includes communications directly with the law firm Norton Rose Fulbright.
6. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled “Ivanka Kushner”), FOIA, and the law firm Winston & Strawn. This request includes communications directly with the law firm Winston & Strawn.

*“Political appointee” should be understood as any person who is a Presidential Appointee

with Senate Confirmation (PAS), a Presidential Appointee (PA), a Non-career SES, any

Schedule C employees, or any persons hired under Temporary Non-career SES

Schedule C employees, or any persons hired under temporary non-career SES

Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C

Appointments.

Please provide all responsive records from the immediate Office of the Secretary, the Office of the Deputy Secretary, and the Office of the General Counsel (or your agency's equivalent of each) from January 20, 2017, to the date the search is conducted.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.^[2] **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**^[3]

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency's prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**^[4] Furthermore, **agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files.** For example, a custodian may have deleted a responsive email from his or her email program, but your

agency's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”^[5] If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”^[6] Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”^[7] Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”^[8]

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.^[9] Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight hopes to decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to

American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's implementing regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of activities of the government. The disclosure of the information sought under this request will document and reveal the operations of the federal government, including the email practices of a senior administration official and the steps taken to ensure compliance with federal records retention law—a matter that President Trump has suggested is sanctionable with imprisonment. There is profound interest in knowing the steps that the government took to ensure compliance with the Presidential Records Act, and the records responsive to this request will contribute significantly to the public's understanding of the government's activities.

This request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.^[10] American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,^[11] American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.^[12] As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.^[13]

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at foia@americanoversight.org or (202) 869-5244. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Cerissa Cafasso

Counsel

American Oversight

[1] Carol D. Leonnig & Josh Dawsey, *Ivanka Trump Used a Personal Email Account to Send Hundreds of Emails About Government Business Last Year*, WASH. POST, Nov. 19, 2018, >https://www.washingtonpost.com/politics/ivanka-trump-used-a-personal-email-account-to-send-hundreds-of-emails-about-government-business-last-year/2018/11/19/6515d1e0-e7a1-11e8-a939-9469f1166f9d_story.html?utm_term=.8afa86a8271c<.

[2] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); *cf. Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

[3] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the

Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official's] work email account.” (citations omitted)).

[4] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), ><https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records><; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), ><https://www.archives.gov/files/records-mgmt/m-12-18.pdf><.

[5] FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

[6] *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

[7] *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

[8] *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

[9] *Mead Data Central*, 566 F.2d at 261.

[10] American Oversight currently has approximately 12,000 page likes on Facebook and 48,000 followers on Twitter. American Oversight, FACEBOOK, ><https://www.facebook.com/weareoversight/>< (last visited Nov. 20, 2018); American Oversight (@weareoversight), TWITTER, ><https://twitter.com/weareoversight>< (last visited Nov. 20, 2018).

[11] *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance><.

[12] *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents><.

[13] *Audit the Wall*, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/investigation/audit-the-wall><.

